

ORIGINAL

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C/M

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
GARY LA BARBERA and  
FRANK FINKEL,

Plaintiffs,

-against-

GOLDEN VALE CONSTRUCTION GROUP,

Defendant.  
-----x

**MEMORANDUM AND ORDER**

No. 06-CV-0813 (FB) (CLP)

*Appearances:*

*For the Plaintiffs:*

Avram H. Schreiber  
40 Exchange Place, Suite 1300  
New York, NY 10005

**BLOCK, Senior District Judge:**

On April 20, 2007, Magistrate Judge Pollack issued a Report and Recommendation ("R&R") recommending that a default judgment of \$135,657.34 in principal contributions owed; \$7,630.63 in interest; \$27,131.44 in liquidated damages; and \$4,815.03 in attorneys' fees and costs, be entered in favor of plaintiffs, Gary LaBarbara and Frank Finkel, Inc. ("plaintiffs"), and against defendant, Golden Vale Construction Group. The R&R recited that "[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within ten (10) days of receipt of this Report," R&R at 11, and that "[f]ailure to file objections within the specified time waives the right to appeal the District Court's Order." *Id.* Plaintiffs' counsel served a copy of the R&R on defendants at their last known address on June 15, 2007, *see* Docket Entry #16 (Affidavit of Service), making objections due by July 5, 2007. *See* Fed. RR. Civ. P. 6(a), 6(e). To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of the magistrate judge’s R&R, the Court adopts it without *de novo* review. The Clerk is directed to enter judgment in accordance with the R&R.

**SO ORDERED.**

/signed/

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FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
July 11, 2007